

**CHAPTER 381  
ECONOMIC DEVELOPMENT AGREEMENT**

By and Between

**HIDALGO COUNTY, TEXAS,**

and

**THE UNIVERSITY OF TEXAS SYSTEM.**

Effective as of December 16, 2014

## CHAPTER 381

### ECONOMIC DEVELOPMENT AGREEMENT

This **CHAPTER 381 ECONOMIC DEVELOPMENT AGREEMENT** (this "**Agreement**") is entered into to be effective as of the 16<sup>th</sup> day of December, 2014 (the "**Effective Date**"), by and between **HIDALGO COUNTY, TEXAS** (the "**County**") and **The University of Texas System ("UT")**.

#### RECITALS

**WHEREAS**, on August 26, 2014, the County, UT, and the Cities of Edinburg, McAllen, Mission, and Pharr (the cities hereinafter referred to as the "**City Parties**") signed a Memorandum of Understanding ("**MOU**") concerning commitments related to establishment of The University of Texas Rio Grande Valley Medical School ("**Medical School**") in order to advance the health, education and economy of the region; and

**WHEREAS**, UT committed to creating and operating in the lower Rio Grande Valley, the new Medical School, with the expectation that the Medical School will increase opportunities for economic development, including new and expanded research funding and technology transfer and commercialization; and

**WHEREAS**, operation of the Medical School will create new jobs and tax value, and will promote local economic development and stimulate business and commercial activity in the County; and

**WHEREAS**, under Chapter 381 of the Texas Local Government Code, the County has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the County; and

**WHEREAS**, to ensure the success of the Medical School, the County committed to fund certain amounts in recognition of the increase in opportunities for economic development, pursuant to an economic development agreement; and

**WHEREAS**, MOU contemplates the County and UT entering into an agreement with respect to the provision of the funds committed by the County in the MOU and the parties have opted to proceed under option (ii) of the "The County of Hidalgo" heading of Section 4 of the MOU by executing this Agreement; and

**WHEREAS**, County and UT desire to set forth in this Agreement the terms and conditions of the payment to UT of County economic development funds; and

**WHEREAS**, the parties recognize that all agreements of the parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof;

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **ARTICLE I**

#### **PURPOSE AND INTERPRETATION**

UT is taking steps to establish the Medical School in accordance with Senate Bill 24, Regular Session, 83<sup>rd</sup> Texas Legislature, as codified in Chapter 79 of the Texas Education Code. Subject to the terms and conditions of this Agreement, the County will grant funds to UT each year from 2014 to 2023, in recognition of the increased opportunities for economic development in the County.

### **ARTICLE II**

#### **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set out below:

**2.1**     **“Agreement”** has the meaning given such term in the introductory paragraph above.

**2.2**     **“City Parties”** has the meaning given such term in the recitals above.

**2.3**     **“County”** has the meaning given such term in the introductory paragraph above.

**2.4**     **“Effective Date”** has the meaning given such term in the introductory paragraph above.

**2.5** “*Medical School*” has the meaning given such term in the recitals above.

**2.6** “*MOU*” has the meaning given such term in the recitals above.

**2.7** “*Support Payments*” means the County’s payments pursuant to this Agreement.

**2.8** The “*Term*” of this Agreement (hereinafter so called) shall include, and extend until the earlier of, (a) the end of the payout periods of the Support Payments as set forth in this Agreement, or (b) the creation of a County or multi-county taxing district and either (i) the provision of that district of either an equivalent amount of support as that committed by the County and City Parties under the MOU or (ii) the acceptance and continuation by that district of the commitments made by the County and City Parties under the MOU.

**2.9** “*UT*” has the meaning given such term in the introductory paragraph above.

### **ARTICLE III**

#### **UT’S OBLIGATION**

**SECTION 3.1. OBLIGATIONS UNDER MOU.** UT remains obligated to the commitments set forth in section 3 of the MOU.

**SECTION 3.2. SOLE OBLIGATION.** The payment of all indebtedness and obligations incurred by UT in connection with the development, construction, and operation of the Medical School shall be solely the obligations of UT. The County shall not be obligated to pay any indebtedness or obligations of UT and shall only be obligated to reimburse UT for the Support Payments in accordance with the terms and conditions of this Agreement.

### **ARTICLE IV**

#### **PAYMENT OF SUPPORT PAYMENTS**

**SECTION 4.1. COUNTY’S OBLIGATION.** The duty of the County to make Support Payments to UT for any purpose under this Agreement is limited in its entirety by the provisions of this Agreement, including without limitation Sections 7.3 and 7.4 below.

**SECTION 4.2. TIME FOR MAKING PAYMENTS.** During the Term, the County shall pay, each year from 2014 to 2023, a Support Payment of One Million Dollars (\$1,000,000) per year to UT. The Support Payment for 2014 will be made as soon as

reasonably possible after the Effective Date of this Agreement. The Support Payments for 2015 through 2023 will be made on or around October 15<sup>th</sup> of each year.

## **ARTICLE V**

### **COVENANTS**

**SECTION 5.1. COVENANTS OF UT.** UT shall comply with the following covenants.

**SECTION 5.1.1. ORGANIZATION.** UT shall not change, or permit to be changed, its organizational documents in any manner that would materially adversely affect UT's obligations under this Agreement.

**SECTION 5.1.2. BUSINESS OF UT.** During the Term of this Agreement, UT shall work to establish the Medical School as required by Chapter 79 of the Texas Education Code and consistent with the terms of the MOU.

**SECTION 5.2. COVENANTS OF THE COUNTY.** The County shall comply with the following covenants.

**SECTION 5.2.1. ORGANIZATION.** The County shall not change, or permit to be changed, its organizational documents in any manner that would materially adversely affect UT or the County's obligations under this Agreement.

**SECTION 5.3 FURTHER ACTIONS.** The County and UT will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES**

**SECTION 6.1. REPRESENTATIONS AND WARRANTIES OF UT.** UT represents and warrants to the County, as of the Effective Date, as follows:

**SECTION 6.1.1. AUTHORITY.** The execution, delivery and performance by UT of this Agreement is within its respective powers and have been duly authorized by all necessary action.

**SECTION 6.1.2. NO CONFLICTS.** Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof will contravene the organizational documents of UT or any judgment, decree, license, order or permit

applicable to UT, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of UT pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which UT is a party or, to the knowledge of UT, by which UT is bound, or to which UT is subject.

**SECTION 6.1.3. NO PENDING LITIGATION.** There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of UT, threatened against or affecting UT or any subsidiaries of UT, questioning the validity or any action taken or to be taken by UT in connection with the execution, delivery and performance by UT of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by UT hereof, wherein an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of UT to perform, its obligations under this Agreement or (ii) would have an adverse effect on the consolidated financial condition or results of operations of UT or on the ability of UT to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Medical School).

**SECTION 6.1.4. NO DEFAULTS.** UT is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which UT is a party or by which UT or any of its property is bound that would have any material adverse effect on UT's ability to perform under this Agreement.

**SECTION 6.2. REPRESENTATION AND WARRANTIES OF THE COUNTY.** The County represents and warrants to UT, as of the Effective Date, as follows:

**SECTION 6.2.1. AUTHORITY.** The execution, delivery and performance by the County of this Agreement is within its respective powers and have been duly authorized by all necessary action.

**SECTION 6.2.2. NO CONFLICTS.** Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the governing documents of the County or any judgment, decree, license, order or permit applicable to the County, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the County pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the County is a party or by which the County is bound, or to which the County is subject.

**SECTION 6.2.3. NO PENDING LITIGATION.** There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of the County, threatened against or affecting the County, questioning the validity of any proceedings taken or to be taken by the County in connection with the execution, delivery and performance by the County of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the County hereof, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of, or the authority or ability of the County to perform its obligations under this Agreement.

**SECTION 6.2.4. NO DEFAULTS.** The County is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which the County is a party or by which the County is bound that would have any material adverse effect on the County's ability to perform under this Agreement.

## **ARTICLE VII PERSONAL LIABILITY OF PUBLIC OFFICIALS; FUNDING AUTHORITY**

**SECTION 7.1. COUNTY OFFICIALS.** To the extent permitted by State law, no employee of the County, nor any commissioner, official or agent of the County, shall be personally responsible for any liability arising under or growing out of this Agreement.

**SECTION 7.2. UT OFFICIALS** To the extent permitted by State law, no employee of UT, nor any regent or agent of UT, shall be personally responsible for any liability arising under or growing out of this Agreement.

**SECTION 7.3. COMMITMENT OF CURRENT REVENUES ONLY.** The Support Payments made hereunder shall be paid solely from lawfully available funds that have been appropriated by the County. Under no circumstances shall the County's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the County shall have no obligation or liability to pay any Support Payments unless the County appropriates funds to make such payment during the year in which such Support Payment(s) is payable.

**SECTION 7.4. AUTHORITY.** If the final judgment of a court of competent jurisdiction determines that any party to this Agreement lacked the necessary authority to make a commitment expressed in the Agreement, the party is released from the commitment, and that party is entitled to and shall receive a refund of any money paid, transferred, or provided under this Agreement.

## **ARTICLE VIII INFORMATION**

UT shall, at such times and in such form as County may reasonably require, furnish periodic information concerning the status of the performance of its obligations under this Agreement as may be requested in writing by the County.

## **ARTICLE IX MISCELLANEOUS**

**SECTION 9.1. ENTIRE AGREEMENT.** This Agreement, including exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

**SECTION 9.2. AMENDMENT.** This Agreement may only be amended, altered, or revoked by written instrument signed by all parties.

**SECTION 9.3. SUCCESSORS AND ASSIGNS.** In this Agreement, unless a clear contrary intention appears, reference to any party includes such party's successors and assigns, and reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. This Agreement is not assignable without the prior written permission of the other party thereto.

**SECTION 9.4. WAIVER.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

**SECTION 9.5. REMEDIES.** Upon breach of this Agreement, including any of the covenants contained in Article V or the representations and warranties contained in Article VI, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages.

**SECTION 9.6. NOTICES.** Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties thereto:

**UT:**

Scott C. Kelley  
Executive Vice Chancellor for Business Affairs  
201 West 7th Street  
Austin, TX 78701-2982  
(512) 400-4560  
(512) 499-2982 (fax)

**COUNTY:**

Hidalgo County  
302 West University Drive  
Edinburg, Texas 78539  
Attn: County Judge  
Telephone: (956) 318-2600  
Facsimile: (956) 318-2699

With a copy to:

Hidalgo County Attorney  
Attn: Stephen L. Crain, Attorney  
Atlas, Hall & Rodriguez, LLP  
818 Pecan Blvd.  
McAllen, TX 78501  
Telephone: (956) 632-8221  
Facsimile: (956) 686-6109

**SECTION 9.7. APPLICABLE LAW.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in State courts located in Hidalgo County, Texas.

**SECTION 9.8. SEVERABILITY.** In the event any provision of this Agreement is illegal, invalid, or unenforceability under the present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**SECTION 9.9. NO THIRD-PARTY BENEFICIARIES.** The County and UT intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the County and UT or permitted assignees of the County and UT.

**SECTION 9.10. NO JOINT VENTURE.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

**SECTION 9.11. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

**SECTION 9.12. FORCE MAJEURE.** Means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

EXECUTED to be effective as of the Effective Date.

COUNTY OF HIDALGO, TEXAS

ATTEST:

By: \_\_\_\_\_  
Name: Ramon Garcia  
Title: County Judge

\_\_\_\_\_  
County Clerk

UNIVERSITY OF TEXAS SYSTEM

By: \_\_\_\_\_  
Name: Scott C. Kelley  
Title: Executive Vice Chancellor for Business Affairs